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# Recent Developments: Powell v. Maryland Aviation Admin.: Court's Finding of Guilt in Criminal Case May Be Used in State Administrative Hearing as Evidence of Misconduct, but May Not Be Given Conclusive Effect

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Section 371 of the Insurance Code. *Id.*

Finally, the court addressed the trial court's error in not granting Mrs. Matthews' request to be maintained on Adm. Matthews' SBP, based on the characterization of the SBP as non-marital property. *Id.* Mrs. Matthews argued that marriage during a substantial period of active duty is not a prerequisite to the award of benefits under the SBP. *Id.* Admiral Matthews, on the other hand, alleged that the SBP, which was derived prior to his marriage, is not subject to equitable distribution, as marital property. *Id.*

Again, the court agreed with Mrs. Matthews, but first

determined that the power of the court to order a party to elect a former spouse as a beneficiary of the SBP does not involve the transfer of property. *Id.* at 253, 647 A.2d at 817. The court then recognized other court holdings which characterized the SBP as a separate and distinct property interest. *Id.*, 647 A.2d at 818. In its conclusion, the court stated that its holding does not require the court to characterize the nature of the interest involved in the case. *Id.* It reasoned that, while property gets its form from the federal statute, a property right is subject to "all conditions of the statute which created it." *Id.* In this case, the condition was the power of the state court

to order a service member to designate a beneficiary. *Id.*

*Matthews v. Matthews* interprets 10 U.S.C. § 1450 (f)(4) as authorizing Maryland courts to compel military servicemembers to maintain former spouses as beneficiaries of their Survivor Benefit Plan. The case is significant in that it grants state courts additional power in the area of family law which maybe exercised during divorce proceedings. The case also recognizes those unusual circumstances in which a former spouse may be in need of a measure of financial security that would not otherwise exist but for the Survivor Benefit Plan.

- Andrea E. Moss

### ***Powell v. Maryland Aviation Admin.:***

#### ***COURT'S FINDING OF GUILT IN CRIMINAL CASE MAY BE USED IN STATE ADMINISTRATIVE HEARING AS EVIDENCE OF MISCONDUCT, BUT MAY NOT BE GIVEN CONCLUSIVE EFFECT.***

In *Powell v. Maryland Aviation Admin.*, 336 Md. 210, 647 A.2d 437 (1994), the Court of Appeals of Maryland determined that an administrative agency hearing on employee misconduct may use a trial court's finding of the individual's guilt as evidence of the misconduct. The criminal finding may not, however, be given conclusive effect in such proceedings.

A maintenance worker at Martin State Airport, David Powell ("Powell"), was suspended for threatening a supervisor. At one of his hearings, Powell learned that a secretary, Colleen Holthaus ("Holthaus"),

had provided information used in the case against him. Following the hearing, Holthaus received obscene and harassing telephone calls which were recorded on her answering machine. She believed the voice was Powell's and, subsequently, the calls were traced back to an area of Martin State Airport to which he had access. Holthaus filed a complaint against Powell in the Circuit Court for Harford County. He was charged and found guilty of telephone misuse in violation of Article 27, Section 555A of the Annotated Code of Maryland (1957, 1992 Repl. Vol.). At sentencing, Powell was granted

probation before judgment under Article 27, Section 641, which provides that upon discharge from probation the person shall not be considered to have had a conviction.

Subsequent to the finding of guilt and prior to the grant of probation before judgement, the Maryland Aviation Administration ("MAA") filed disciplinary charges against Powell. The MAA cited COMAR Section 06.01.01.47 as the basis for removal from employment. The specific grounds included offensive conduct toward fellow employees, wards of the State or the public; conviction of a criminal offense or of a misdemeanor involving moral turpitude; and, conduct which brings the service into public disrepute.

Powell requested that the administrative law judge ("ALJ") and the MAA dismiss the charges, reasoning that probation before judgement did not constitute a conviction upon which to base charges. At the administrative hearing, Holthaus and two supervisors testified to having identified Powell's voice on the answering machine, while Powell denied making any calls. In resolving the factual conflict, the ALJ refused to second guess the judge's sentence of probation before judgement or the finding of guilt. The ALJ decided that the trial judge's finding of guilt was sufficient to support a violation of COMAR Section 06.01.01.47E and M. The ALJ recommended that Powell's employment be terminated.

Powell filed exceptions to these findings with the Secretary of Personnel, who upheld the ALJ's decision. Powell then brought his case to the Circuit Court for Baltimore County, seeking a remand for a *de novo* hearing. The circuit judge granted the remand, determining that the entry of probation before judgement in the criminal case was inadmissible in the ALJ's evidentiary hearing and that the factual finding of guilt could not be given weight. The MAA appealed to the court of special appeals which reversed the circuit court, holding that the probation before judgement disposition established the fact of his misconduct beyond dispute. The court declared that Powell had received due process and the issue of his guilt need not be relitigated. Powell was granted certiorari by the Court of Appeals of Maryland.

The court of appeals recognized their task as one of determining whether "a guilty finding in a criminal matter against a State employee, which criminal matter received a probation before judgement disposition, [can] be given preclusive effect in State administrative disciplinary actions taken against the employee regarding the same incident." *Powell*, 336 Md. at 217, 647 A.2d at 440. Before the court, Powell argued that the circuit court's finding of guilt should have no preclusive effect in his administrative hearing. He asserted alternatively that if the finding was to be allowed as nonconclusive evidence in that

hearing, the matter should be remanded for a *de novo* hearing before a new ALJ. In response, the MAA did not maintain that the criminal finding be given conclusive effect, but argued that the finding be admissible in the hearing as evidence of the conduct charged. It also asked that if the matter be remanded, the resolution of the factual issue be made on the present record, without, however, giving preclusive effect to the guilty finding.

The court began its analysis by noting that the prior finding of guilt was brought forth in an administrative hearing, not a judicial one. *Id.* at 218, 647 A.2d at 441. Since the circuit court's decision was only a finding of guilt and not a conviction, the principle of nonmutual collateral estoppel would not bar relitigation of the fact. *Id.* (citing *Mannan v. District of Columbia Bd. of Medicine*, 558 A.2d 329 (D.C. 1989)). In *Mannan*, the board's decision to place complete reliance on a circuit court's probation before judgment was held in error because there was no conviction and, therefore, no final judgment upon which to base the preclusive effect of the plea or findings underlying the plea. *Id.* (citing *Mannan*, 558 A.2d at 338).

Based on *Mannan* and other cases, the court determined that the ALJ had erred in giving conclusive effect to the finding of Powell's guilt. *Id.* at 219, 647 A.2d at 441. The court held that the ALJ could

"second guess" the circuit court judge and must review all of the evidence to resolve the credibility dispute between Holthaus and her witnesses and Powell. *Id.* Accordingly, the court decided that a remand was necessary. *Id.* The court stated the general rule for determining the admissibility of evidence in state employee disciplinary proceedings: "The presiding officer may admit probative evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs and give probative effect to that evidence." *Id.* at 220, 647 A.2d at 442 (citing the Administrative Procedure Act, Md. Code Ann., State Gov't Art. § 10-213 (1984, 1993 Supp.)).

The court then referred to the court of special appeals' recognition that a finding of guilt underlying probation before judgment has probative value. *Id.* at 221, 647 A.2d at 442 (citing *Ogburn v. State*, 71 Md. App. 496, 526 A.2d 614). Referring to Section 641, the court also noted that nothing in the

statute bars the use of a court's finding of guilt as evidence in an administrative hearing. *Id.* The court determined that Powell's dismissal from state employment "is not a 'disqualification or disability imposed by law because of conviction of crime' within the meaning of § 641(c)." *Id.* at 221, 647 A.2d at 442-43.

Having disposed of arguments on both sides of the issue, the court reversed and remanded the case to the Court of Special Appeals of Maryland to vacate the judgement of the Circuit Court for Baltimore County. The circuit court was ordered to vacate the order of the Secretary of Personnel with directions to institute new proceedings. *Id.* at 222, 647 A.2d at 443. The court rejected Powell's request for the court to designate a new ALJ and the MAA's request to designate the same ALJ, declaring that the selection of the ALJ was entirely up to the Chief Administrative Law Judge of the Office of Administrative Hearings. *Id.*

The decision by the court

of appeals takes a sensible approach, allowing some weight to be given to a court's criminal findings in a state administrative hearing. Invariably, a state employee tried for employment-related criminal misconduct in a district or circuit court will be brought up on similar charges by his own agency. It is reasonable that the findings of the court be given probative value in administrative proceedings, particularly in light of the court's expertise in handling criminal cases. At the same time, by allowing the findings to be admitted as evidence, but not as conclusive proof of misconduct, the court of appeals recognizes the importance of flexibility in administrative proceedings. If a court's findings were completely decisive, the administrative proceeding would represent nothing more than a rubber stamp on the judicial proceedings. In this way, an agency is allowed to consider valuable evidence in the form of judicial findings, yet maintain its own legitimacy and autonomy.

- Michael Campbell

